HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.W.P. No. 1411 of 2002

Date of Decision:16.4.2007

Jaipal Singh ……. Petitioner.

Versus

Union of India and Others …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes.

For the petitioner : Mr. R.K. Gautam, Sr. Advocate
with Mr. Naveen Bhardwaj, Advocate.

For the respondents : Mr. Sandeep Sharma, Assistant Solicitor General of India.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

Petitioner was enrolled in the Indian Army on 30th November, 1979. He was served with a show cause notice dated 18.9.1995. Perusal of the same shows that during his service, he has incurred various entries in his conduct sheet, details are given as under:-

	Date of offence	**Offence under AA Section**	**Punishment awarded.**	**Date of award.**
(a)	25 Jul. 83	AA Sec.39(b) Without sufficient cause OSL	10 days pay fine.	25 Jul. 83
(b)	06 Mar. 85	-do-	14 days RI	18 Mar. 85

Whether reporters of Local Papers may be allowed to see the judgment?

(c)	01 Nov. 87	AA Sec. 38 (1) Deserting the service.	Tried by SCM and awarded 09 months RI in military prison and to be under stoppage of pay and allowances for Rs.432.44	13 Nov . 90
	12 Sep. 90	AA Sec. 54(b) Lossing by Neglect the property of the Govt.		
	12 Sep. 90	AA Sec. 54(B) Lossing by Neglect clothing & equipment the property of the Govt.		
(d)	21 Apr. 92	AA Sec. 39 (b) Without sufficient cause OSL	28 days RI and 14 days detention	09 Jun 92
(e)	21 Apr. 95	AA Sec. 39 (a) Absenting himself without leave.	28 days RI	20 May 95
(f)	02 Aug. 95	AA Sec. 39 (b) Without sufficient cause OSL	28 days RI	31 Aug 95

In the notice, it was indicated that the petitioner had become a bad example for other soldiers and his further retention in the service was undesirable in the interest of discipline. An opportunity in compliance of Rule 13(3), Table III (V) of the Army Rules, was afforded to the petitioner. However, he did not respond to the said show cause notice. He was dismissed from the Army on 29th September, 1995. Even though the order of his dismissal is not on record, however, his certificate of service placed as Annexure P1, on record, indicates the reason of his dismissal as ***"Undesirable soldier".*** The certificate shows that he has rendered 15 years 10 months 16 days of service, which also includes non-qualifying service also.

Petitioner preferred an appeal dated 29th June, 1992 seeking condonation of 3 years and 291 days of non-qualifying service to enable him to fulfill the eligibility criteria of availing the pension under the

Pension Regulation for Army 1961. The same was, however, rejected by the respondents vide letter dated 9th September, 1999 (P3), relevant portion of the letter is reproduced as under:-

> "You were discharged from service on 28 Sep. 95 under Army Rule 13(3) Item III (V) as undesirable soldier before fulfill the terms and engagement of your service. Hence, this office is unable to take any action on your petition. As per existing rules, your non qualifying service cannot be included towards pension by this office."

Petitioner further sent a legal notice dated 19th September, 2000 and for want of response in the affirmative from the respondents, petitioner preferred the present writ petition on 11th August, 2002.

Section 38 of the Army Act, 1950 (hereinafter referred to as 'the Act') stipulates that a person who desert or attempt to desert service shall, on conviction by a Court Martial be liable to suffer imprisonment for a term, which may extend upto seven years. The Pension Regulation for Army, 1961, Part 1, Regulation 123 provides that a person who has been guilty of an offence of desertion under Section 38 shall forfeit the whole of his prior service towards pension or gratuity upon being convicted by Court Martial with one exception that on completion of period of three years further service, in the colours with exemplary conduct and without any red ink entry, he shall be eligible to reckon the forfeited service towards pension.

Admittedly, the petitioner has been awarded rigorous imprisonment for a period of nine months in the year 1990. Show cause notice as reproduced hereinabove indicates that the petitioner had further been inflicted with punishment of rigorous imprisonment on three different occasions. Para 2 page 34 of the counter affidavit categorically states that

thereafter petitioner has again suffered three more red ink entries after trial by Summary Court Martial. There is no rebuttal to the same by the petitioner.

The respondents have categorically stated that out of the total length of 15 years 10 months and 16 days of service rendered by the petitioner, his non-qualifying service of 3 years 287 days has to be deducted for the offences for which the petitioner has been convicted. The qualifying service for entitlement under the Regulation is a minimum of 15 years.

In this view of the matter, I see no reason to interfere in the orders passed by the respondents rejecting the application of the petitioner for his entitlement for pension under the Pension Regulation.

(Sanjay Karol),
Judge.

April 16, 2007
(rana)